

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

LEE S. DAGOSTINI

Petitioner,

v.

**Case No. 06-C-1246
(Criminal Case No. 04-CR-146)**

UNITED STATES OF AMERICA

Respondent.

ORDER

Petitioner Lee Dagostini filed a motion under 28 U.S.C. § 2255, alleging that his trial counsel provided ineffective assistance. I disagreed and denied the motion. Petitioner has now filed a notice of appeal and request for a certificate of appealability (“COA”).

I. COA STANDARD

Before a § 2255 petitioner may take an appeal, the district court must consider whether to grant him a COA pursuant to 28 U.S.C. § 2253(c). Fed. R. App. P. 22(b). The COA may issue only if the applicant makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The standard for making a “substantial showing” is whether “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (internal quote marks omitted). Where a district court has rejected a petitioner’s constitutional claims on the merits, “the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists

would find the district court's assessment of the constitutional claims debatable or wrong.”
Id. at 484.

II. DISCUSSION

Petitioner argued that his lawyer provided an inaccurate prediction of his sentence, thereby inducing him to waive his right to trial and plead guilty. However, as I explained in detail in my order denying the motion, petitioner failed to present any reliable and authenticated evidence that counsel failed to make a good-faith effort to determine the facts and estimate the sentence based on the available information. Further, as I also explained in my order, petitioner failed to present any evidence, not even an affidavit from himself, demonstrating that but for counsel's advice there is a reasonable probability that he would have gone to trial. Thus, his claim failed. See Bethel v. United States, 458 F.3d 711, 716 (7th Cir. 2006) (holding that § 2255 petitioner must show that counsel's performance fell below an objective standard of reasonableness, and there is a reasonable probability that, but for counsel's errors, he would not have pled guilty). Petitioner provides no basis for debating either of these determinations in his COA application.

III. CONCLUSION

THEREFORE, IT IS ORDERED that petitioner's request for a COA (R. 7) is **DENIED**.

Dated at Milwaukee, Wisconsin, this 10th day of January, 2007.

/s Lynn Adelman

LYNN ADELMAN
District Judge